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20 **IN THE UNITED STATES DISTRICT COURT**
21
FOR THE DISTRICT OF NEVADA

22 RUTHANN JOHNSTON,

23 Plaintiff,

24 v.

25 C. R. BARD, INCORPORATED and BARD
26 PERIPHERAL VASCULAR,
27 INCORPORATED,

28 Defendants.

CASE NO. 3:20-cv-00069-MMD-BNW

29
STIPULATION AND ORDER TO
STAY DISCOVERY AND ALL
PRETRIAL DEADLINES
(SECOND REQUEST)

30 Plaintiff Ruth Ann Johnston (“Plaintiff”) and Defendants C. R. Bard, Inc. and Bard
31 Peripheral Vascular, Inc. (“Defendants” and collectively with Plaintiff, the “Parties”),
32 pursuant to Fed. R. Civ. P. 26(c) and (d) and LR IA 6-1, respectfully request that this Court
33 temporarily stay discovery and all pretrial deadlines, as set forth in the revised Discovery Plan
34

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1 (Dkt. 54), until **February 26, 2021** while the Parties finalize settlement documents. In
 2 support thereof, the Parties state as follows:

3 This case was part of the Multi-District Litigation proceeding *In re: Bard IVC Filters*
 4 *Product Liability Litigation*, pending before Senior Judge David Campbell of the District of
 5 Arizona.

6 1. Plaintiff alleges experiencing complications following the implantation of a
 7 Bard Inferior Vena Cava (“IVC”) filter, a prescription medical device. She has asserted three
 8 strict products liability counts (manufacturing defect, information defect (failure to warn) and
 9 design defect), six negligence counts (design, manufacture, failure to recall/retrofit, failure to
 10 warn, negligent misrepresentation and negligence per se), two breach of warranty counts
 11 (express and implied), two counts sounding in fraud (fraudulent misrepresentation and
 12 fraudulent concealment), an unfair and deceptive trade practices count, and a claim for
 13 punitive damages.

14 2. Defendants deny the allegations contained in the Complaint.

15 3. After four years, the completion of general issue discovery, and the conduct of
 16 three bellwether trials, Judge Campbell ordered that cases, which were not settled or were not
 17 close to settling, be transferred or remanded to the appropriate jurisdictions around the
 18 country for case-specific discovery and trial. As a part of that process, he established a “track”
 19 system, wherein certain cases were placed on tracks either to finalize settlement paperwork,
 20 continue settlement negotiations, or be remanded or transferred.

21 4. This case was transferred to this Court on March 30, 2020 because at the time
 22 it was not close to settling. But, since that date, the Parties have engaged in further
 23 settlement discussions and have recently reached a settlement in principle.

24 5. Accordingly, the Parties request that this Court issue an order staying discovery
 25 and pretrial deadlines until **February 26, 2021** to allow the Parties time to finalize the
 26 settlement. This will prevent unnecessary expenditures of the Parties and judicial resources as
 27 well as place this case on a similar “track” as the MDL cases Judge Campbell determined
 28 should continue settlement dialogue.

1 6. A district court has broad discretion over pretrial discovery rulings. *Crawford-*
 2 *El v. Britton*, 523 U.S. 574, 598 (1998); *accord Republic of Ecuador v. Hinchee*, 741 F.3d
 3 1185, 1188-89 (11th Cir. 2013); *Thermal Design, Inc. v. Am. Soc'y of Heating, Refrigerating*
 4 & *Air-Conditioning Eng'rs, Inc.*, 755 F.3d 832, 837 (7th Cir. 2014); *see also Cook v. Kartridg*
 5 *Pak Co.*, 840 F.2d 602, 604 (8th Cir. 1988) (“A district court must be free to use and control
 6 pretrial procedure in furtherance of the orderly administration of justice.”).

7 7. Under Federal Rules of Civil Procedure 26(c) and 26(d), a court may limit the
 8 scope of discovery or control its sequence. *Britton*, 523 U.S. at 598. Although settlement
 9 negotiations do not automatically excuse a party from its discovery obligations, the parties
 10 can seek a stay prior to the cutoff date. *Sofo v. Pan-Am. Life Ins. Co.*, 13 F.3d 239, 242
 11 (7th Cir. 1994); *see also, Wichita Falls Office Assocs. v. Banc One Corp.*, 978 F.2d 915, 918
 12 (5th Cir. 1993) (finding that a “trial judge’s decision to curtail discovery is granted great
 13 deference,” and noting that the discovery had been pushed back a number of times because of
 14 pending settlement negotiations).

15 8. Facilitating the efforts of parties to resolve their disputes weighs in favor of
 16 granting a stay. In *Coker v. Dowd*, 2:13-cv-0994-JCM-NJK, 2013 U.S. Dist. LEXIS 201845,
 17 at *2-3 (D. Nev. July 8, 2013), the parties requested a 60-day stay to facilitate ongoing
 18 settlement negotiations and permit them to mediate global settlement. The Court granted the
 19 stay, finding the parties would be prejudiced if required to move forward with discovery at
 20 that time and a stay would potentially prevent an unnecessary complication in the case. *Id.* at
 21 *3. Here, the Parties have reached a settlement in principle.

22 9. The Parties agree that the relief sought herein is necessary to handle the case in
 23 the most economical fashion yet allow sufficient time to schedule and complete discovery if
 24 necessary, consistent with the scheduling obligations of counsel. The relief sought in this
 25 Motion is not being requested for delay, but so that justice may be done.

26 ///

27 ///

28 ///

1 **WHEREFORE**, Plaintiff and Defendants respectfully request the Court's approval of
2 this stipulation to stay discovery and all pretrial deadlines until **February 26, 2021** to allow
3 the Parties to conduct ongoing settlement negotiations.

4 **IT IS SO STIPULATED.**

5 Respectfully submitted on November 20, 2020.

6 DALIMONTE RUEB STOLLER, LLP

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16 The parties' stipulation is GRANTED. However, given the length of the discovery stay IT
17 IS ORDERED that on January 11, 2021, defendants must file a status report informing
the Court whether negotiations are still ongoing and whether the discovery stay
continues to facilitate settlement. The discovery stay will continue unabated until further
court action.

19 **IT IS SO ORDERED**

20 **DATED:** 12:46 pm, November 24, 2020

22 

23 **BRENDA WEKSLER**

24 **UNITED STATES MAGISTRATE JUDGE**